

**Department of Health & Human Services
Health Care Financing Administration
Operational Policy Letter #98
OPL99.098**

Date: July 1, 1999

Subject: Effective Dates for Medicare+Choice (M+C) Special Election Periods (SEP)

Summary:

42 CFR 422.62(b) explains that SEPs include those situations where: (1) the individual has made a permanent move outside of the service area or continuation area or has experienced another change in circumstances as determined by HCFA (other than termination for non-payment of premiums or disruptive behavior) that causes the individual to no longer be eligible to elect the M+C plan; (2) the Medicare+Choice organization's (M+CO) contract for the M+C plan has been terminated or discontinued in the service area or continuation area in which the individual resides; (3) the individual demonstrates to HCFA that the M+CO offering the M+C plan substantially violated a material provision of its contract under Part C in relation to the individual, or the M+CO (or its agent) materially misrepresented the plan when marketing the plan; or (4) the individual meets such other exceptional conditions as HCFA may provide.

As described at 42 CFR 422.60(a)(1), beginning January 1, 1999 all M+COs must accept elections made by beneficiaries making an election in a SEP (please refer to the most current version of 422.60(a)(1) in the Federal Register notice published on February 17, 1999), unless a capacity limit applies.

The purpose of this OPL is to describe the time frames and effective dates for SEPs.

Policy:

During a SEP, an individual may discontinue the election of an M+C plan offered by an M+CO and change to a different M+C plan or Medicare fee-for-service (original Medicare) plan. The time frame and effective dates for SEPs are as follows.

Please note that the time frame of a SEP denotes the time frame during which an individual may make an election. It does not necessarily correspond to the effective date of coverage. For example, if a SEP exists for an individual from May - July, then an

M+CO must receive a completed election form from that individual some time between May 1 and July 31 in order to consider the election a SEP election. However, the type of SEP will dictate what the effective date of coverage may be, and that effective date of coverage may be some time after July 31. The following discussion of SEPs and their corresponding effective dates will demonstrate this concept more fully.

SEPs for Permanent Moves

A SEP exists for individuals who permanently move outside of the service or continuation area. For this SEP, an individual may elect another M+C plan or original Medicare the month prior to the month of the permanent move, the month of the move, or up to one month after the move. The individual may choose an effective date of up to three months after the month in which the M+C plan receives the completed enrollment form. However, the effective date may not be earlier than the date the individual moves to the new service area or earlier than the date the M+CO receives the completed enrollment form.

Please keep in mind that, as outlined at 42 CFR 422.74(b)(2)(i), a member of an M+C plan who moves permanently out of the service area must be disenrolled from the plan, unless continuation of enrollment applies. Therefore, while we have established a SEP that allows an individual adequate time to move into a new area and to subsequently choose a new M+C plan, that individual will no longer be enrolled in the original M+C plan after the month of the move. Unless an individual enrolls in a new M+C plan with an effective date of the month after the move (e.g., the individual moves on June 18 and enrolls in a new plan effective July 1), s/he will be enrolled in original Medicare until s/he elects the new M+C plan.

Example: a beneficiary is a member of an M+C plan in Florida and intends to move to Arizona on June 18. A SEP exists for this beneficiary from May 1-July 31.

- A. If an M+C plan in Arizona receives a completed enrollment form from the beneficiary in May, the beneficiary can choose an effective date of July 1 or August 1.

- B. If the M+C plan receives the completed enrollment form from the beneficiary in June (the month of the move), the beneficiary can choose an effective date of July 1, August 1, or September 1.
- C. If the M+C plan receives the completed enrollment form in July, the beneficiary could choose an effective date of August 1, September 1, or October 1.

At the time the individual makes the election into an M+C plan, the individual must provide the specific address where the individual will permanently reside upon moving into the service area, so that the M+CO can determine that the individual meets the residency requirements for enrollment in the plan.

SEPs for Contract Violation

In the event an individual is able to demonstrate to HCFA that the M+CO offering the M+C plan of which s/he is a member substantially violated a material provision of its contract under Part C in relation to the individual, or the M+CO (or its agent) materially misrepresented the plan when marketing the plan, the individual may disenroll from the M+C plan and elect original Medicare or another M+C plan. The SEP will begin once HCFA agrees with the individual that a violation has occurred. Its length will depend on whether the individual immediately elects a new M+C plan upon disenrollment from the original M+C plan or whether the individual initially elects original Medicare before choosing a new M+C plan.

We note that in some case-specific situations, HCFA may process a retroactive disenrollment for these type of disenrollments. If the disenrollment is not retroactive:

- An SEP exists such that an individual may elect another M+C plan or original Medicare during the last month of enrollment in the M+CO, for an effective date of the month after the month the M+CO receives the completed enrollment form.

Example: A member of an M+C plan demonstrates to HCFA on January 16 that the M+CO substantially violated a material provision of its contract. As a result, the member will be disenrolled from the M+C plan on January 31. A SEP exists for this beneficiary beginning January 16 and lasting until the end of January to choose original Medicare or another M+C plan for a February 1 effective date.

- If the individual in the above example elects original Medicare during the last month of enrollment in the M+CO (either by choosing original Medicare or by not choosing an M+C plan and therefore defaulting to original Medicare), the individual will be given an additional 90 days from the effective date of the disenrollment from the M+CO to elect another M+C plan. During this 90-day period, and until the individual elects a new M+C plan, the individual will be enrolled in original Medicare. The individual may choose an effective date into a new M+C plan beginning any of the three months after the month in which the M+C plan receives the completed enrollment form. However, the effective date may not be earlier than the date the M+CO receives the completed enrollment form.

Example: A member of an M+C plan demonstrates to HCFA on January 16 that the M+CO substantially violated a material provision of its contract. The member decides to return to original Medicare. As a result, the member is disenrolled from the M+C plan on January 31 and enrolled in original Medicare with a February 1 effective date. A 90-day SEP continues to exist for the beneficiary from February 1 through April 30. In this example, a new M+C plan then receives a completed enrollment form from the individual on April 15. The beneficiary can choose an effective date of May 1, June 1, or July 1.

If the disenrollment is retroactive, the regional office that grants the retroactive disenrollment will provide the beneficiary with the time frame for his/her SEP to elect another M+C plan. However, the individual will not be allowed to choose an effective date into an M+C plan of more than three months after the month the M+C plan receives the completed enrollment form, and the effective date may not be earlier than the date the M+CO receives the completed enrollment form.

SEPs for Exceptional Conditions

The BBA gives HCFA the authority to establish SEPs for exceptional conditions. HCFA has established the following SEPs based on exceptional conditions:

1. SEP EGHP: A SEP exists for individuals electing M+C plans through their employer groups. Refer to OPL 99.087 for information on this SEP.
2. SEP Y2K: For contract year 1999, a SEP exists for members affected by contract nonrenewals that are effective January 1, 2000. This SEP is part of a Year 2000 Risk Mitigation Plan and is intended to stagger elections due to non renewals over the course of several months prior to December 1999, so that election volumes are more manageable for M+COs. This SEP will begin September 15, 1999 and last

through November 30, 1999. Elections made during this SEP are effective January 1, 2000. This SEP supports information on contract year 2000 nonrenewals outlined in OPL 99.089.

SEPs for Contract Nonrenewals and Contract/Service Area Terminations

In general, to allow members affected by nonrenewals or terminations ample time to make a choice of their new election, SEPs for contract nonrenewals and contract/service area terminations begin when the M+CO is required to give notification to the member and end three months after that notification. Effective dates during these SEPs are described below. HCFA has the discretion to modify this SEP as necessary for any nonrenewals or terminations when the circumstances are unique and warrant a need for a modified SEP.

In particular:

- o Beginning with contract year 2000, for members of M+C plans that will be affected by contract nonrenewals that are effective January 1 of the contract year (42 CFR 422.506), a SEP exists that will allow the member to choose a new M+C plan or original Medicare. (Refer to “SEPs for Exceptional Conditions” for an explanation of a similar SEP for contract year 1999.) For this type of nonrenewal, M+COs are required to give notice to affected members at least 90 days prior to the date of nonrenewal (42 CFR 422.506(a)(2)(ii)). To help coordinate with the notification time frames, the SEP begins October 1 and ends on December 31 of the year prior to the date the termination takes place.

During this SEP, a beneficiary may choose an effective date of November 1, December 1, or January 1; however, the effective date may not be earlier than the date the new M+CO receives the completed election form.

- o For members of plans who will be affected by a termination of contract by the M+CO or a modification or termination of the contract by mutual consent (42 CFR 422.512 and 422.508(a)(1)), a SEP exists that will allow the member to choose a new M+C plan or original Medicare. For this type of termination, M+COs are required to give notice to affected members at least 60 days prior to the date of termination (422.512(b)(2)). To help coordinate with the notification time frames, the SEP begins two months before the termination effective date and ends one month after the month of the termination. Please note that if an individual does not elect an M+C plan before the termination effective date, s/he will be defaulted to original Medicare on the effective date of the termination. However, the SEP will still be in effect should the individual wish to subsequently elect an M+C plan (for

a current, not retroactive, effective date).

Beneficiaries affected by these types of terminations may choose an effective date of the month after notice is given, or up to two months after the month of the termination. However, the effective date may not be earlier than the date the new M+CO receives the completed election form.

- *For example*, if an M+CO contract will terminate for cause on April 30, an SEP lasts from March 1 through May 31. In this scenario, a beneficiary could choose an effective date of April 1, May 1, or June 1; however, the effective date may not be earlier than the date the new M+CO receives the completed election form.
- o For members of plans that will be affected by M+CO contract/service area terminations by HCFA (42 CFR 422.510), a SEP also exists that will allow the member to choose a new M+C plan or original Medicare. For this type of termination, M+COs are required to give notice to affected members at least 30 days prior to the date of termination (422.510(b)(1)(ii)). To help coordinate with the notification time frames, the SEP begins one month before the termination effective date and ends two months after the date of the termination. Please note that if an individual does not elect an M+C plan before the termination effective date, s/he will be defaulted to original Medicare on the effective date of the termination. However, the SEP will still be in effect should the individual wish to subsequently elect an M+C plan (for a current, not retroactive, effective date).

Beneficiaries affected by these types of terminations may choose an effective date of up to three months after the month of termination. However, the effective date may not be earlier than the date the new M+CO receives the completed election form.

- For example, if HCFA plans to terminate an M+CO contract on June 30, a SEP lasts from June 1 through August 31. In this scenario, a beneficiary could choose an effective date of July 1, August 1, or September 1; however, the effective date may not be earlier than the date the new M+CO receives the completed election form.
- o HCFA will establish the SEP during the termination process for immediate terminations by HCFA (422.510(b)(2)), where HCFA provides notice of termination to an M+C plan's members and the termination may be mid-month.

Expiration Date: December 31, 2000

Contact: HCFA Regional Office Managed Care Staff

This OPL was prepared by the Center for Beneficiary Services